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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 17 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM No. 93-41
)	
TRIAD FAMILY NETWORK, INC.)	BPED-910227MD
Winston-Salem, North Carolina)	
Channel 207C3)	
)	
POSITIVE ALTERNATIVE RADIO, INC.)	BPED-911119MC
Asheboro, North Carolina)	
Channel 207A)	
)	
For Construction Permit for a)	
New Noncommercial Educational)	
FM Station)	

TO: Administrative Law Judge
Joseph P. Gonzalez

PETITION FOR LEAVE TO AMEND¹

Positive Alternative Radio, Inc. ("Radio"), through its attorneys, and pursuant to § 73.3522(b) of the rules, petitions the Presiding Judge for leave to amend in order to specify a new transmitter and antenna site.²

¹ The HDO in the proceeding effectively dismissed Radio's application, and a Petition for Reconsideration of the HDO was filed March 16, 1993 (a copy is attached hereto). Inasmuch as a decision on that Petition may not be forthcoming before time expires for filing of this one, the Presiding Judge is urged to grant the relief requested herein. Three copies of Radio's site change amendment were refiled with the Secretary March 17, 1993; one copy is attached to this pleading.

² Section 73.3522(b)(2) provides that in broadcast comparative proceedings, amendments "...relating to issues first raised in the designation order may be filed as a matter of right. . .".
~~Should the Presiding Judge conclude that this issue with which~~

Background

Prior to filing its application for a new educational FM station at Asheboro, North Carolina (November 19, 1991), its principal (and a director) Vernon H. Baker ("Baker") sought out Edward F. Swicegood, President of Randolph Broadcasting, Inc., licensee of WKXR-AM, Asheboro, and received reasonable assurance from him that Radio's FM antenna could be mounted on one of the WKXR towers.

During the ensuing year, Radio's opponent, Triad Family Network, Inc. ("Triad") filed a Petition to Deny Radio's application, based upon engineering objections (disruption of pattern, etc.) claimed to result to the operation of WKXR through mounting of Radio's antenna on one of WKXR's towers. It is significant that the licensee of WKXR did not join in or support that Petition to Deny. Subsequently, William R. Burton, Chairman, Student Educational Broadcasting, Inc. (WXYC), University of North Carolina, Chapel Hill, filed an Informal Objection to Radio's application, based upon "efficient use of the spectrum" and possible interference to WXYC and WSOE, Eton College, North Carolina. Shortly thereafter, Don Grady, Faculty Advisor, WSOE,

Radio is now cornered (although not an Issue) was raised in the HDO, this petition will be unnecessary.

and David Wright, Technical Consultant, filed an identical, carbon-copy of the WXYC Informal Objection.³

It has become patent that someone, somewhere, had been marshalling forces against Radio (possibly a fit subject for a petition to enlarge issues). Efforts culminated in an undated letter received by Baker from WKXR (President Swicegood) in mid-December 1992, effectively reversing his previous assurance for use of a WKXR tower for Radio's FM antenna.⁴ In their previous conversation, Swicegood and Baker had in 1991 discussed use of a WKXR tower, but had not broached the subject of a reasonable charge to Radio. On the basis of many years in the broadcasting business and long experience with leasing of tower space - as lessee and as lessor - in the North Carolina-Southwest Virginia area, Baker concluded on the basis of his friendly, cooperative conversation with Swicegood, that the latter would exact a reasonable fee for use of his tower. In Baker's experience, tower space was leased for \$150-\$200 per month,⁵ and this Radio was prepared to pay. Customarily, payments commence upon grant of a construction permit or the beginning of construction.

³ All three of these efforts to secure the dismissal of Radio's application were denied by the HDO.

⁴ A copy of Swicegood's letter is attached, as is Radio's Petition for Reconsideration of HDO, the facts and arguments of which are respectfully requested to be incorporated into this pleading.

⁵ Radio has now agreed to pay WZOO, Asheboro \$200 per month for use of space on one of its towers.

Baker and Radio were both chagrined and shocked to receive Swicegood's December letter demanding \$1200 per month, \$14,400 in advance, and no refunds, all with approximately a 5-day deadline for acceptance or the previously granted assurance would be null and void. Should this proceeding extend over two or three years, a not unlikely circumstance with Exceptions to the Review Board and appeals to the Commission. Radio would be expected to pay Swicegood

Swicegood. No new issues will be required, and the hearing will not be disrupted. Finally, Triad will not be unfairly prejudiced and Radio will gain no comparative advantage.⁶

In accord with Commission Organization rules, Section 0.151, and Practice and Procedure Section 1.243, the Presiding Judge is empowered to rule on Radio's request for leave to amend to change site. The facts are crystal-clear. Radio had secured reasonable assurance for use of its proposed site. For reasons unknown to Radio, Swicegood changed his mind and determined to deny Radio the use of his tower as a site, and rather than flatly deny future use, he set the price so high that he could be reasonably assured that Radio could not afford to pay the exorbitant cost.⁷ Thus, Radio lost its site, and was forced to take immediate steps to secure another and to seek leave to amend (and unless §73.3522(b) obviates the need for this petition) in order to specify the new site.

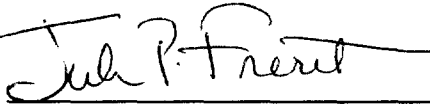
⁶ In fact, Radio will suffer a comparative reduction to the extent that pursuant to its new site amendment, it will serve less area and fewer listeners than as originally proposed.

⁷ Baker spoke with Swicegood on or about March 12, 1993 to determine if he had a change of heart, but Swicegood impressed Baker that he would not have Radio's antenna on his tower under any circumstances.

Accordingly, the Presiding Judge should grant Radio's pending (and refiled) amendment, thus possibly mooted Radio's petition to reconsider the HDO, all in order that the parties may get on with the hearing.

Respectfully submitted,

POSITIVE ALTERNATIVE RADIO, INC.

By 

Julian P. Freret
Its Counsel

BOOTH, FRERET & IMLAY
1233 20th Street, N. W.
Suite 204
Washington, D. C. 20036
(202) 296-9100

March 17, 1993

WKXR Radio

5,000 WATTS • 1260 AM • 919-625-2187 • 1115 EASTVIEW DRIVE • ASHEBORO, N. C. 27203

OUTLINE & TERMS FOR AGREEMENT BETWEEN PAR AND VERNON H. BAKER AND RANDOLPH BROADCASTING, INC.

AGREEMENT TO INCLUDE:

RENT OF \$1,200.00 PER MONTH FOR RENTAL OF TOWER SPACE TO BE PAID YEARLY IN ADVANCE BY PAR BY DECEMBER 20th OF THE PREVIOUS YEAR.

PAYMENT FOR THE YEAR 1993 SHALL BE PAID IN ADVANCE BY DECEMBER 20, 1992 IN THE AMOUNT OF \$14,400.00.

IF PAR BUILDS, THIS AGREEMENT RUNS FOR FIVE (5) YEARS FROM THE START OF CONSTRUCTION.

IF FOR ANY REASON, ENGINEERING CANNOT BE WORKED OUT TO ENSURE WKXR'S SIGNAL INTEGRITY, THIS AGREEMENT BECOMES VOID, AND ALL RENTS PAID BY PAR, SHALL BE RETAINED BY RANDOLPH BROADCASTING, INC.

SHOULD PAR CANCEL AT ANY TIME BEFORE CONSTRUCTION BEGINS, ANY AND ALL RENT PAYMENTS MADE TO RANDOLPH BROADCASTING, INC. SHALL BE RETAINED BY RANDOLPH BROADCASTING, INC.

PAR SHALL PAY FOR ALL ENGINEERING FEES, CONSTRUCTION COSTS, ETC. INVOLVED IN ASSURING THE ACCURACY OF WKXR RADIO'S PATTERN, ETC.

INSURANCE AND HOLD HARMLESS CLAUSES MUST BE INCLUDED IN ANY AGREEMENT.

AGREEMENT FORM MUST BE APPROVED BY RANDOLPH BROADCASTING'S ATTORNEY, WADE HARGROVE.

ANY LEASE AGREEMENT CONCERNING THIS MATTER MUST BE SIGNED AND THE FIRST YEAR'S RENT PAID ON OR BEFORE DECEMBER 20, 1992 OR RANDOLPH BROADCASTING, INC. WITHDRAWS ANY OFFER OF TO LEASE TOWER SPACE TO PAR.

ACKNOWLEDGE RECEIPT BY VERNON H. BAKER: _____

DATE: _____

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In re Applications of)	MM No. 93-41
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Asheboro, North Carolina)	
Channel 207A)	
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For Construction Permit for a)	
New Noncommercial Educational)	
FM Station)	

TO: Chief, Audio Services Division

PETITION FOR RECONSIDERATION OF HDO

Comes now Positive Alternative Radio, Inc. ("Radio" or "Petitioner"), an applicant for authority to construct a new educational FM station to operate at Asheboro, North Carolina, through its counsel, and petitions that the Chief, Audio Services Division ("Chief") reconsider that portion of his Hearing Designation Order ("HDO") released March 9, 1993 contained in paragraph 4, to wit:

4. In addition, on February 9, 1993, Radio submitted an engineering amendment proposing to change its transmitter site. In its cover letter, Radio claims "good cause" for its post-"B" cut-off amendment. It states that, in securing "reasonable assurance" for its original WKXR(AM) site, Radio was assured, with respect to costs, that "I'll treat you right." Subsequently, Radio was informed that the site rent would be \$1200 per month, which exceeds its financial means. Because we do not find this showing sufficient to demonstrate good cause for the amendment, see Erwin O'Conner Broadcasting

Co., 22 FCC 2d 140, 143 (Rev. Bd. 1970), we will return the amendment.

Section 1.106(a)(1) of the Commission's rules provides in part:

A petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding.

The above-quoted paragraph 4 of the HDO goes directly to petitioner's participation in this proceeding, in that it in effect inevitably results in the dismissal of petitioner's application by the presiding judge, since the original site proposed by Radio is no longer available.

Background

Petitioner's principal (and director) Vernon H. Baker ("Baker") commenced preparation of Radio's application in the late fall of 1991. Mindful of the need to secure "reasonable assurance" of use of a site for Radio's transmitter, and after its engineer outlined an acceptable area, Baker concluded that an optimum site would be to mount Radio's FM antenna on the North tower of AM Station WKXR, licensed to Asheboro. To that end, he spoke with Edward F. Swicegood II, president of Randolph Broadcasting, Inc..

Thus, Baker was satisfied that he had secured "reasonable assurance" of a site for Radio's transmitter and antenna, prior to filing Radio's application November 19, 1991. Indeed, the same day that he had contacted Swicegood, Baker addressed a letter in confirmation to him. A copy is attached to this petition as Exhibit A. No reply was received (or expected).

Accordingly, it is beyond doubt that Radio had "reasonable

advance payment by December 20th, and requiring that there be no refunds. Unless payment was made by December 20th, the previously agreed to use of the WKXR site would be cancelled.³

The terms and conditions required by Swicegood were beyond the means of Radio, a non-commercial applicant. Baker, an experienced broadcaster in southwest Virginia and North Carolina, was (and is) thoroughly familiar with tower space rental charges in the area, and had anticipated payment in the neighborhood of the going rate, that is, \$150 to \$200 per month. The price demanded by Swicegood was shocking to Baker, and sent the message that Swicegood intended but to dissolve the previously understanding, and leave Radio without a site. Radio stayed ready, willing, able and eager to pay a reasonable charge for use of Swicegood's tower, but Radio's directors now felt that they had been no more than the victim of an effort to require them to seek another site.

Upon receipt of Swicegood's demand letter and realizing that they were unable to meet its unreasonable terms, Radio's principals immediately sought a new site, and were able to secure reasonable assurance of use of space on the center tower of WZOO(AM), Asheboro. The agreed cost of this space is \$200.00 per month, to commence with the start of construction, all in keeping with similar charges in the Virginia-North Carolina area. (See Exhibit C attached). Radio anticipated filing an amendment application

³ Obviously, somebody had "gotten to" Swicegood, and had advised him to establish a price so high and terms so onerous that Radio would be unable to comply and thus lose its site.

within the 30-day period following loss of its previous site, but the intervention of Christmas-New Year's holidays delayed briefly the completion of engineering studies. Its amendment was tendered February 9, 1993, along with a copy of the WKXR demand letter and explanation to justify acceptance of the amendment and to substantiate loss of its previous site.

The HDO rejected Radio's site amendment, citing Erwin O'Conner. As a result of denial of acceptance of its said amendment, Radio is now without a site. The December 20, 1992 deadline demanded by Swicegood for payment of \$14,400 in advance rent⁴ or cancellation of the agreement has passed, so the WKXR site is no longer available, and with denial of Radio's site change amendment, it is indeed without a site, hence the HDO has effectively terminated Radio's participation in the captioned proceeding. This petition for reconsideration of the HDO is accordingly permitted by §106(a)(1) of the rules.

Argument

The concept of reasonableness permeates (and must permeate) Commission considerations of site availability for an applicant before the Commission. Indeed, the terms "reasonable assurance" is the mark by which the Commission determines whether an applicant has secured authorization to use a transmitter site it proposes. There is no doubt that there was a "meeting of the minds" of Baker

⁴ For the first year's tower space rent. Should this hearing continue for two or three additional years (as it well may with appeals), Radio would have been obligated for \$14,400 more each year - all non-refundable!

and Swicegood when they discussed use of a WKXR tower for Radio's antenna. Genessee Communications, Inc., 3 FCC 3595 (Rev. Bd. 1988). Details were generally agreed to, but no specific charge per month was specified, Baker (and presumably Swicegood) leaving the matter of a reasonable charge for the final contract after Radio had received a construction permit. The criteria of National Innovative Programming Network, Inc., 2 FCC Rcd 5641, 5643 (1987) were more than met:

11. We have long held that a broadcast applicant need not have a binding agreement or absolute assurance of a proposed site. What an applicant must show, and what National has shown, is that it has obtained reasonable assurance that its proposed site is available, with some indication of the property owner's favorable disposition toward making an arrangement with the applicant, beyond simply a mere possibility. Low Power Television Service, 57 RR 2d 234, 242 (1984) (Filing Windows). This reasonable assurance may be acquired by informal telephone contacts by counsel for the applicant, and rent and other details may be negotiated at a yet undetermined future date. See Puopolo Communications, Inc., 60 RR 2d 964 (Rev. Bd. 1986). The applicant, at the time it files its application, should have "obtained sufficient assurances in response to justify its belief that the . . . site [is] suitable and available until advised otherwise . . ." Id. at 966

The requirements of Erwin O'Conner Broadcasting Co., 22 FCC 2d 140, 143 (Rev. Bd 1970) have indeed been fulfilled:

Radio acted with due diligence in submitting its site amendment. Upon learning in mid-December that Swicegood had proposed thoroughly unreasonable terms, its Director Baker immediately set about to locate a new site and directed Radio's consulting engineer to prepare the amendment, which he dated February 1, 1993. It was signed by Baker February 5 and filed four days later, February 9, 1993.

The Radio amendment was precipitated by Swicegood's shocking terms, and was in no wise the voluntary act of Radio.

No addition of issues will be required upon acceptance of Radio's amendment, which is resubmitted with this petition.

Acceptance will not disrupt the orderly conduct of the hearing. Unless Radio's amendment is accepted, there will be no hearing and the opportunity for Asheboro, North Carolina to receive a first local non-commercial educational broadcasting service will be precluded.

Triad, the only other party to this proceeding, will not be unfairly prejudiced by acceptance of Radio's site change amendment.

Nor will Radio gain a comparative advantage; in fact, the contrary is true, to the extent that from its original site (WKXR tower) Radio proposed to serve 1208 km² and 75,207 listeners; from the amended site it will serve 931 km² and 62,366 listeners.

Nor could Radio have reasonably foreseen, pursuant to Section 73.3522(b)(1)(i), that Swicegood would impose charges and conditions excessive in the extreme, for use of his tower.⁵

In Alegria I. Inc., 4 FCC Rcd 587, 65 RR 2d 1502 (1988), the Commission examined a disagreement between a site owner and an applicant which held a purchase option requiring that the price for the property be determined by an independent appraisal, but owners were attempting to induce applicant to pay the higher price offered by a third party. After applicant attempted to exercise the

⁵ Moreover, in Anax Broadcasting Inc., 87 FCC 2d 483 (1981), the Commission held:

. . . we have not required a showing that an amendment is occasioned by an involuntary or unforeseen act in cases where the amendment tends to remove a disqualifying defect and confers no comparative advantage.

fn: William R. Gaston, 35 FCC 2d 615 (Rev. Bd. 1972) rev. denied FCC 72-828, released September 20, 1972. See generally Sands Broadcasting Corp., 22 RR 106 (ALJ 1961)

purchase option, owners notified applicant that they did not intend to sell the property because the option was not timely exercised. The purchase option was mutually terminated some two months later and applicant was permitted to amend to a new site.

A somewhat similar case, 62 Broadcasting, Inc., 4 FCC Rcd 1768 (Rev. Bd 1989) involved an applicant who proposed use of a to-be-constructed tower, the owner of which demanded \$150,000 to \$200,000 from the applicant for tower strengthening, up front and prior to hearing. Applicant understandably sought other alternatives.

In the instant case, the HDO contained only the above-quoted paragraph 4 as justification for denial of Radio's amendment, and mentioned only the \$1200 per month charge demanded by Swicegood. Apparently the year-payment-in-advance and the non-refundability were not taken into consideration. Nor was the likelihood of the hearing extending for an additional year or two, with a total of non-refundable charges of \$28,800 or \$43,200 to be paid by Radio on the chance that its application would be ultimately granted. Indeed, it is difficult to envision a more purposeful denial of a site previously assured.⁶

Conclusion

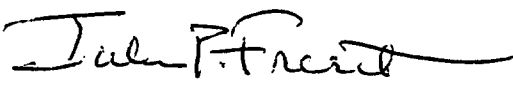
The Chief, Audio Services Division, should reconsider paragraph 4 of his HDO, and accept Radio's site amendment, which is

⁶ If Swicegood had demanded \$10,000 per month, or \$50,000, would the Commission have refused Radio's amendment? As shown hereinabove, and by the statement of Radio's director attached, the demand of Swicegood was at least 6 times the going rate, plus additional payments of possibly up to \$45,000, non refundable.

resubmitted with this Petition; the Alternative is unavoidable dismissal of Radio's application, a result contrary to every aspect of the public interest.

Respectfully submitted,

POSITIVE ALTERNATIVE RADIO, INC.

By 
Julian P. Freret
Its Counsel

BOOTH, FRERET & IMLAY
1233 20th Street, N. W.
Suite 204
Washington, D. C. 20036
(202) 296-9100

March 15, 1993

5,000 WATTS • 1260 AM • 919-625-2187 • 1115 EASTVIEW DRIVE • ASHEBORO, N. C. 27203

OUTLINE & TERMS FOR AGREEMENT BETWEEN
PAR AND VERNON H. BAKER AND RANDOLPH BROADCASTING, INC.

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INSURANCE AND HOLD HARMLESS CLAUSES MUST BE INCLUDED IN ANY AGREEMENT.

AGREEMENT FORM MUST BE APPROVED BY RANDOLPH BROADCASTING'S ATTORNEY, WADE HARGROVE.

ANY LEASE AGREEMENT CONCERNING THIS MATTER MUST BE SIGNED AND THE FIRST YEAR'S RENT PAID ON OR BEFORE DECEMBER 20, 1992 OR RANDOLPH BROADCASTING, INC. WITHDRAWS ANY OFFER OF TO LEASE TOWER SPACE TO PAR.

ACKNOWLEDGE RECEIPT BY VERNON H. BAKER: _____

DATE: _____

EXHIBIT C

STATEMENT OF VERNON H. BAKER

I, Vernon H. Baker, make this statement under penalty of perjury.

I am a director of Positive Alternative Radio, Inc. ("Radio"), an applicant before the Federal Communications Commissions for authority to construct and operate a new educational FM station at Asheboro, North Carolina. I have read the Petition for Reconsideration of HDQ prepared on behalf of Radio and aver that the facts therein are true and correct to my best knowledge and belief.

I state further that I telephoned to Edward F. Swicegood, President of Randolph Broadcasting, Inc., licensee of Radio Station WKXR, Asheboro, North Carolina, March 12, 1993 and asked if he would reconsider his letter received by me on or about December 15, 1992, regarding lease of space on his tower, and he informed me that he did not want the Radio antenna on his WKXR tower under any conditions.

After receipt of Mr. Swicegood's said letter of mid-December 1992, I contacted Mr. D. W. Long, President of Faith Enterprises, Inc., licensee of WZOO, Asheboro, who assured me that I could install the Radio antenna on one of his towers. I called Mr. Long again March 12, 1993 and confirmed the previous assurances, and asked what charges he proposed to make for use of his tower. He replied that \$200.00 per month would be satisfactory. He wanted no payment prior to the start of construction, nor any prohibition against refund.

That figure is approximately the same or perhaps a little higher than my understanding of charges normally made in the North Carolina-southwestern Virginia area. I base this conclusion on my experiences as licensee, director, applicant, or professional engineer for stations in Hickory, Mint Hill, Lewisville, Wake Forest, Oxford, and Claremont, North Carolina, and stations in Salem, Pulaski, Dublin, Bluefield, Fieldale, Culpeper, Galax, Martinsville, Waynesboro and Earlysville, Virginia.

In my opinion, the charges and conditions proposed by Mr. Swicegood in his said letter to me were extremely excessive and deliberately designed to preclude the use of his tower by Radio.

Dated this 15th day of March, 1993.

Vernon H. Baker
Vernon H. Baker

CERTIFICATE OF SERVICE

I, Margaret A. Ford, Office Manager of the law firm of Booth, Freret & Imlay, do hereby certify that copies of the foregoing PETITION FOR RECONSIDERATION OF HDO were mailed this 15th day of March, 1993, to the offices of the following:

*Chief, Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N. W., Room 302
Washington, D. C. 20554

B. Jay Baraff, Esquire
Baraff, Koerner, Olender
& Hochberg, P.C.
5335 Wisconsin Avenue, N. W.
Suite 300
Washington, D. C. 20015-2003


Margaret A. Ford

* Via Hand Delivery

LAW OFFICES OF
BOOTH, FRERET & IMLAY

SUITE 204
1233 20TH STREET, N.W.
WASHINGTON, D.C. 20036

ROBERT M. BOOTH, JR. (1911-1981)
JULIAN P. FRERET
CHRISTOPHER D. IMLAY

TELEPHONE
(202) 296-9100
TELECOPIER
(202) 293-1319

March 17, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N. W., Room 222
Washington, D. C. 20554

In re: Resubmitted Amendment to Pending
Application of Positive Alternative
Radio, Inc. for new FM Broadcast
Station, Asheboro, NC (BPED-911119MC).
Docket MM No. 93-41

Dear Ms. Searcy:

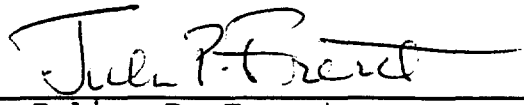
An application to change site was filed February 9, 1993 by Positive Alternative Radio, Inc. which is seeking authority to construct a new FM broadcast station at Asheboro, North Carolina.

By Hearing Designation Order released March 9, 1993, the Chief, Audio Services Division, stated that "we will return the [change site] amendment". It has not as yet been received.

Filed concurrently herewith is a Petition for Reconsideration of the return of the said amendment. Accordingly, it is resubmitted, pending a ruling on the Petition.

Yours very truly,

Positive Alternative Radio, Inc.

By 
Julian P. Freret
Its Counsel

JPF:mf

CC B. Jay Baraff, Esquire

LAW OFFICES OF
BOOTH, FRERET & IMLAY

SUITE 204
1233 20TH STREET, N.W.
WASHINGTON, D.C. 20036

ROBERT M. BOOTH, JR. (1911-1981)
JULIAN P. FRERET
CHRISTOPHER D. IMLAY

TELEPHONE
(202) 296-9100
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(202) 293-1319

February 8, 1993

RECEIVED

FEB 9 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N. W., Room 222
Washington, D. C. 20554

In re: Application of Positive Alternative
Radio, Inc. for new FM Broadcast
Station, Asheboro, NC (BPED-911119MC);
Amendment to Change Antenna/Transmitter
Site.

Dear Ms. Searcy:

On behalf of the captioned applicant, there is enclosed herewith an original and two copies of an amendment to change transmitter site.

The captioned application appeared on Cut-Off Report No. B-146, released July 7, 1992; accordingly, Section 73.3522(a)(2) requires a showing of good cause for the subject amendment. Applicant Positive Alternative Radio, Inc. is a non-profit educational institution and possesses limited funds. Prior to filing the Asheboro application, Vernon H. Baker, Director of Positive Alternative Radio, Inc., contacted WKXR(AM) in Asheboro and received reasonable assurance of use of its tower. With respect to costs, he was further assured that "I'll treat you right".

Subsequent to this informal agreement, a petition to deny the Positive Alternative application was filed by competing applicant, Triad Family Network, and several educational stations in North Carolina submitted informal oppositions. Positive Alternative has no knowledge that these were brought to the attention of WKXR(AM) or that it was importuned to take steps to insure that the price for tower use would be beyond the means of Positive Alternative. In any event, WKXR sent the enclosed letter to Positive Alternative, demanding rent of \$1200.00 per month for tower space and payment of one year in advance by December 20, 1992. These terms were far beyond the financial means of Positive Alternative and it was therefore forced to secure another site and amend its application.

Ms. Donna R. Searcy
February 8, 1993
Page Two

Positive Alternative was ready, willing, able and eager to pay a reasonable amount for use of a WKXR(AM) tower to mount its antenna but confronted with the demands of that station, it recognized no alternative but to move its site. The attached amendment to its application should be accepted and processed by the Commission's staff.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Jul P. Freret", with a long horizontal flourish extending to the right.

Julian P. Freret
Counsel for Positive
Alternative Radio, Inc.

JPF:mf

CC B. Jay Baraff, Esquire (w/enc)
Triad Family Network

Enclosures

WKXR Radio

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ACKNOWLEDGE RECEIPT BY VERNON H. BAKER: _____

DATE: _____

POSITIVE ALTERNATIVE RADIO INC.
P. O. BOX 889
Blacksburg, Virginia 24063

February 5, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N. W., Room 222
Washington, D. C. 20554

Dear Ms. Searcy:

The application for the new Ed. FM station at
Ashboro, North Carolina, is hereby amended to specify
a new antenna site. This is a minor amendment.

Yours very truly,

Vernon H. Baker
Vernon H. Baker
Director